

PATENT

Our Docket No. 0624-4129

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reissue of
Letters Patent 5,599,804

Laurence C. Mudge

Serial No.: 415,934

Filed on: April 3, 1995

Granted on: February 4, 1997

For: **FUNGICIDAL COMPOSITIONS FOR THE ENHANCEMENT
OF TURF QUALITY**

Mail Stop Reissue
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRELIMINARY REMARKS

Sir:

In the Reissue Application filed concurrently herewith, independent claims 1 and 10 of U.S. Patent No. 5,599,804 ("the '804 patent") have been amended, original patent claim 9 has been cancelled and new claims 24-38 have been added. Accordingly, claims 1- 8 and 10-38 are pending in this reissue application. Examination on the merits is respectfully requested. No new matter has been introduced.

The Reissue Declaration submitted with the application (in unexecuted form) includes the power of attorney, the certification by the assignee under 37 CFR § 3.73(b) and an offer to surrender the patent under 37 CFR § - 1.178. Also submitted herewith, is an Information Disclosure Statement.

Presented Claims 1-8 and 10-38 Are Not Broader in Scope than the Original '804 Patent Claims and They Are Supported in the '804 Patent Specification.

The claims submitted in this reissue application are not broader in scope than the claims issued in the '804 patent.

The first change with respect to patent claims 1 – 23 is the express terminology inserted into independent claims 1 and 10 to exclude the presence of the “fungicide mancozeb” from the claimed process and composition. To the extent the original patent claims could be construed to embrace the presence of mancozeb, the presented claims 1-7 and 9-23 are narrower. The negative limitation to exclude mancozeb is supported by the '804 patent specification. Tables 2 and 3 refer to some treatments including mancozeb, other treatments do not include mancozeb. In the text at Column 3, lines 10-30, mancozeb is not listed with other fungicides that can be combined with the “first active agent” and the benzoporphyrin or phthalocyanine component.

Two additional changes are made in claims 1 and 10. In Patent claim 10, the term “tier” is changed to “for” to correct an obvious mistake. The correct terminology “...fungicidal composition for enhancing...” appears in the '804 patent specification at col. 1, lines 39-40.

In Patent claim 1, the expression “1 part by weight of” has been relocated to apply to the “first active agent,” including both components (i) and (ii), rather than only applying to component (i) as written in original patent claim 1. This correction is consistent with patent claim 2 which refers to “1 part by weight” as pertaining to the “first active agent.” This is also consistent with patent claim 10, which applies the expression “1 part by weight” to the “first active agent.”

Original patent claim 9 is deleted in the reissue application because it appears as a substantial duplicate of patent claim 8.

The reissue application presents new claims 24-38 which are directed to subject matter which falls within and is subgeneric to the original patent claims 1-23. Applicant seeks to include subgeneric composition and method claims which are limited to the first active agent denoted as “(ii)” in patent claims 1 and 10, namely phosphorous acid or an alkali or alkali earth metal salt thereof. New Claims 24-38 in the reissue application are directed to such subgeneric compositions and methods and include, where applicable, the other corrections discussed above.

**The Present Claims Are Patentable Over the Prior Art
Description of the Mixture of FORE™ and ALIETTE™**

If the ‘804 patent claims were so construed to embrace a composition or method including mancozeb, the patent claims would be invalid over the prior art Lucas U.S. Patent 5,336,661, a reference of record and considered during the original prosecution for the ‘804 patent. The Lucas ‘661 patent describes in the Examples and Table 3 the treatment of crown and root rot with a mixture of the active fungicide ingredients of mancozeb plus fosetyl-Al, obtained by mixing together the commercial fungicides known under the names FORE™ (active ingredient: mancozeb) and ALIETTE™ (active ingredient: fosetyl-Al). See, e.g. ‘661 patent at Column 4, lines 45-65 and Table 3. As stated in the ‘804 patent at Column 7, lines 65-66, the fungicide FORE™ contains both mancozeb and Pigment Blue 15, which is a phthalocyanine dye.

The independent claims 1 and 10, as presented in the reissue application, are patentably distinguished over the prior art mixture of ALIETTE™ and FORE™ because they

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exclude mancozeb and therefore the commercial product FORE™. As concluded in the original prosecution, the prior art does not contain a suggestion to add a phthalocyanine dye to the active agents recited in the compositions and methods of the present claims.

CONCLUSION:

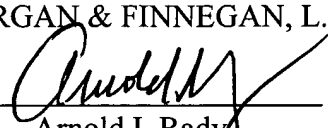
It is respectfully submitted that reissue claims 1-8 and 10-38 are fully supported and patentable and an early action finding allowance of these claims is respectfully solicited.

The undersigned attorney invites the opportunity to discuss any matter with the examiner which can expedite the prosecution of this application.

Respectfully submitted,

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Dated: May 19, 2004

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